

Office or employee sued in an official capacity. Other courts have suggested that the answer deadline in these circumstances is controlled by Rule 12(a)(4)(A), which defers the deadline to answer while a motion to dismiss is pending. *See Norton v. Rosier*, No. 14-cv-260, 2016 U.S. Dist. LEXIS 83804, at *2 (E.D.N.C. June 28, 2016); *but see Greenberg*, 488 F.3d at 1340 n.12 (noting that “the applicability of Rule 12(a)(4)(A) to an appellate court’s reversal of a district court’s grant of a Rule 12 motion is unclear”).

Here, Defendants respectfully propose an answer deadline of July 29, 2022. That date falls in between the deadlines that would be set by the *Norton* rule (July 5) and by the *Greenberg* rule (August 22). The July 29 date is particularly reasonable considering the extraordinary length of Plaintiff’s complaint, which contains 505 paragraphs of allegations. Defendants are already working on the answer, but additional time is necessary to gather information required to respond to the hundreds of factual allegations in Plaintiff’s prolix complaint.

Accordingly, Defendants respectfully request the Court set July 29 as the deadline for Defendants to file their answer.

Pursuant to Local Civil Rule 7.1(b)(2), the undersigned has consulted with Plaintiff’s counsel before filing this Motion. Plaintiff’s counsel requested Defendants include the following language in this Motion:

Defendants’ answer to Plaintiff’s complaint is due on July 5, 2022 under Federal Rule of Civil Procedure 12(a)(4)(A). *See Norton v. Rosier*, No. 7:14-CV-260-BO, 2016 WL 11662177, at *1 (E.D.N.C. June 28, 2016) (“Although this Court dismissed plaintiff’s complaint in its entirety on a motion by defendants, when that order was reversed in part and remanded by the Fourth Circuit so that plaintiff’s claims against Rosier might proceed, the rule relating to the time for filing a responsive pleading following a motion to dismiss was revived, and Rosier had fourteen days from the date of entry of the order of this Court effecting the mandate of the court of appeals.”); *Broglie v. Mackay-Smith*, 75 F.R.D. 739, 742 (W.D. Va. 1977) (“However, when on appeal the Fourth Circuit reversed [the district court’s] decision, thereby denying the motion to dismiss, Rule 12(a)(1) was revived, and defendants had [14] days from notification of that action in which to file their answer.”). On the eve of this deadline, Defendants now request that this court intervene

and “set” their answer deadline for July 29, 2022. Though Defendants style their motion as one to “set” the answer deadline, in reality they seek an extension of time from the deadline set by the Federal Rules of Civil Procedure. Plaintiff opposes their extension request. Defendants have been in possession of the complaint since March 2020; they have defended the complaint on the merits, including with a litany of sworn declarations and exhibits in opposition to Plaintiff’s motion for summary judgment; and, by virtue of their position as federal officials, they have had the benefit of 45 days, rather than the 14 days that would be afforded any other defendant, to prepare for the return of this case to the district court following the Fourth Circuit’s opinion. More importantly, the Fourth Circuit plainly stated in its opinion that Plaintiff may not recover any back pay directly in federal district court. Accordingly, any further delay will cause Plaintiff irreparable harm in the form of lost earnings she may never recover. Plaintiff intends to file a response to Defendants’ motion.

Respectfully submitted,

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